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GORDON E. GUYER, Director

January 7, 1988

Mr. Valdas V. Adamkus
Regional Administrator, Region V
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

Dear Mr. Adamkus:

In response to the request of Mr. Charles Anderson, of your staff, I am hereby providing our interpretation of the use of the term "state required bond" which is utilized in the current "Memorandum of Understanding" (MOU) regarding financial responsibility for Class II injection wells, that was executed by our two agencies on May 2, 1986. Apparently, your permitting staff have raised the question of the applicability of the MOU when an operator meets his financial responsibility requirements under Act No. 61, P.A. of 1939, as amended, by filing other than surety bonds (i.e. cash, Letters of Credit or Certificates of Deposit).

I will first address the relationship between the authority provided in Act No. 61 and the Administrative Rules promulgated pursuant to that statute for implementation of the Act. Section 6 (MCL 319.6) requires the Supervisor of Wells to prohibit waste and to that end empowers him to require:

"The filing of an adequate surety, security or cash bonds of owners, producers, operators or their authorized representatives in such reasonable form, condition, term and amount as will insure compliance with this act and with the rules or orders issued thereunder and to provide for the release thereof." MCL 319.6(p)

R299.1106, states as follows:

"A person who drills a well as provided in Rule 101, or who acquires a well or wells as provided in Rule 105 shall file a surety bond with the supervisor on a form provided by the supervisor, which has been executed by a responsible surety company authorized to do business in the State of Michigan."

MEMORANDUM OF UNDERSTANDINGOWNER OR OPERATOR USE OF THE MICHIGAN WELL BOND TO SATISFY THE FEDERAL FINANCIAL RESPONSIBILITY REQUIREMENT FOR CLASS II WELLS

The United States Environmental Protection Agency, Region V (hereinafter "EPA") and the Michigan Department of Natural Resources (hereinafter, "DNR," or the "State") hereby enter into this agreement. This agreement is to implement as effectively as possible EPA's responsibilities under the Safe Drinking Water Act (SDWA) through the cooperative efforts of the EPA and the State. This agreement is also to assure efficient allocation of resources, minimize duplication of effort, and avoid confusion within the regulated community. This agreement outlines the procedures and criteria requisite to EPA accepting an owner/operator's Michigan well bond in order to comply with the Federal financial responsibility requirements. These Federal financial responsibility requirements provide for proper closure, plugging and abandonment of Class II injection wells.

This MOU is a predetermination by the EPA Regional Administrator that the terms of this MOU and the State mechanism are coextensive with the Federal financial responsibility requirements for Class II injection wells. Because Michigan Act 61 requirements for Class II wells are coextensive with the underground injection control requirements of the SDWA, the basis for an EPA Notice to Plug should also constitute the basis for a Notice of Determination by the DNR supervisor of wells. Where the owner/operator of a Class II injection well has failed to plug and abandon the well consistent with the plugging and abandonment requirements, the DNR shall undertake to properly plug and abandon the well.

1. Definitions. It is the understanding of the parties that the following terms which are applicable to this MOU have the following meanings:

Class II injection well - means wells which inject fluids:

- (1) which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;
- (2) For enhanced recovery of oil or natural gas; and
- (3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

Contaminant - means any physical, chemical, biological, or radiological substance or matter in water.

Underground fresh water resources - means an aquifer or its portion;

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For Class II owner/operators in Michigan who use the State-required bond to satisfy, in part or in full, the Federal financial responsibility requirement, DNR will accept a financial assurance bond in an amount that would satisfy the Federal requirement, provided that it is not less than \$5,000 for a single well or \$50,000 for a blanket bond.

5. EPA Listing of Class II Wells using the State Bond. On a quarterly basis EPA shall submit to the DNR a listing of all Class II wells which have used the Michigan State bond to comply with Federal financial responsibility requirement. Such reports shall commence on July 15, 1986.
6. Plugging and Abandonment of a Well Subject to this Understanding. Upon determining that a Class II injection well or its owner/operator is in violation of the SDWA, the regulations promulgated pursuant thereto, or any other applicable Federal requirement, EPA may initiate enforcement actions, including a Notice to Plug, to compel compliance with the Federal Underground Injection Control program. EPA will provide to DNR, as each action occurs, concurrent written notification of said determination(s), violation(s), notice(s), and one copy of all relevant correspondence with the owner/operator.

If EPA determines that a Class II injection well in the State of Michigan needs to be closed, plugged and abandoned and the owner/operator is unable to adequately plug the well, then upon written request from the EPA Regional Administrator or his designee, the DNR will accept responsibility to expeditiously effect proper closure, plugging and abandonment of the well through use of the State bond in accordance with the provisions of State rules and regulations.

Whenever the DNR accepts responsibility for closure, plugging and abandonment of a well for EPA, an EPA representative must witness the Plugging and Abandonment. The subject well shall not be considered properly closed, plugged and abandoned until the plugging affidavit has been signed by both State and EPA representatives.

Upon completion of closure, plugging and abandonment for the subject well(s), any remaining bond funds shall no longer constitute part of the Federal financial responsibility requirement for the subject plugged and abandoned well(s).

7. Maintaining this Understanding. If ever EPA and DNR disagree on, or do not mutually approve of, specific actions or timing to close, plug and abandon an injection well, then the parties executing this agreement or their designees shall meet to discuss and determine a resolution of this issue. Pending this resolution, EPA may reconsider its predetermination under 40 CFR Part 144.65 that the Michigan State well bond funds are, in fact, available for equivalent closure, plugging and abandonment of the subject owner/operator's Class II